

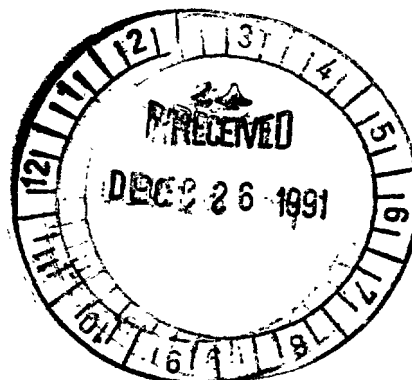


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE SUITE 1200

DALLAS TEXAS 75202-2733



December 20, 1991

Bailey Task Force Administrator  
c/o Debra L. Baker  
Mayor, Day, Caldwell & Keeton, L.L.P.  
700 Louisiana, Suite 1900  
Houston, Texas 77002-2778

Re: Bailey Waste Disposal Site  
Comments on Revised Bid Documents, Final Quality Assurance  
Plan, Final Emission Control Plan, and Final Sampling and  
Monitoring Plan for the Bailey Site Remediation,  
Orange County, Texas

Dear Ms. Baker:

This letter transmits the Environmental Protection Agency's  
comments on the above mention documents for the Bailey Site  
Remediation. If you have any question, please contact me at (214)  
655-6735.

Sincerely,

*Chris G. Villarreal*

Chris G. Villarreal  
Superfund Enforcement

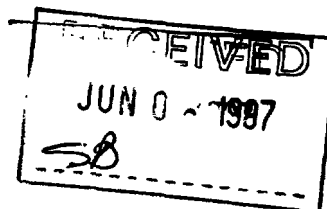
Enclosure

cc: Mark deLorimier, Fluor Daniel

PROJ. # 06039606

FILE

HEADING Comments/Revised  
Bid Documents, Final  
QAP, Final Emiss. Contrl.  
Plan, Final SAMP



801402

**EPA's COMMENTS ON THE BAILEY  
FINAL PROJECT SUPPORT PLANS  
DECEMBER 20, 1991**

**FINAL EMISSION CONTROL PLAN**  
APPROVED

**FINAL QUALITY ASSURANCE PROJECT PLAN**  
APPROVED

**FINAL SAMPLING AND MONITORING PLAN**

**Table 2, pages 13-14**

The number of samples for water analysis, 1/week during discharge, would be adequate if the treatment system was operating continuously for the duration of the project. However, due to the intermittent nature of the discharge for this project, it will be necessary to sample a minimum of once per batch, or 1/week during discharge, as proposed, which ever is more frequent.

Also note, as stated in the October 18, 1991 Texas Water Commission Interoffice Memorandum regarding the Bailey Superfund Site,

"the discharge should meet the whole effluent toxicity requirement of greater than 50% survival in 100% effluent concentration. We recommend that a 24-hour acute whole effluent toxicity test be conducted every week that discharge occurs. If a toxicity test fails to demonstrate greater than 50% survival in the 100% effluent concentration, discharge would cease until the problem has been rectified."

This stated criteria will need to be adhered to.

I would also recommend that water samples be taken more frequently during the outset of discharging from the on-site wastewater treatment facility. This will help insure the discharge standards are not being exceeded.

**Section 4.0 GEOTECHNICAL MONITORING AND CONTINGENCY PLANS**

This section will need to be submitted.

**BID DOCUMENTS  
FOR  
BAILEY SITE REMEDIATION  
ORANGE COUNTY, TEXAS**

**GENERAL COMMENTS:**

Please revise document to provide Debra Baker's new mailing address:

Bailey Site Settlers Committee  
c/o Mayor, Day, Caldwell & Keeton, L.L.P.  
700 Louisiana, Suite 1900  
Houston, Texas 77002-2778

Attention: Debra L. Baker

I found that the following pages gave the previous address: vii, viii, 00300-1, 00671-2, 00674-1, 00675-1, 00677-1, 00680-1, 00681-1,

**RESPONSE TO EPA'S COMMENTS:**

**COMMENT 12:**

**Section 00455, Figure I, Bailey Disposal Site, Unit Price Schedule**

Is this needed or can we use Section 00300 Figure I to apply for additional work? This may be very confusing to the bidder on how he will be judged.

**RESPONSE:**

The unit price schedule is necessary to compensate for quantities or conditions of work which may vary substantially from that estimated by the Engineer. It could be potentially unfair to both parties in the Contract to hold the Contractor to a price bid for a certain quantity or condition of work when a substantial variance occurs during construction.

**COMMENT TO RESPONSE:**

How is substantially defined?

**SPECIFIC COMMENTS:**

**3.0 QUALIFICATIONS OF BIDDERS pg. 00100-2**

Bids will only be accepted from Bidders who have been prequalified by the BSSC. Each Bid must contain evidence of Bidder's qualification to do business in the state where the project is located.

Did the prequalification contain this?

**6.02 Bid Security, pg. 00100-4:**

Text states, "If the Successful Bidder fails to execute and deliver the Contract and furnish the required documents within the time frame required, BSSC may annul the Notice of Award and the Bid Security will be forfeited.

What is the time frame required? Is it 15 days of the date of the mailing of the Notice of Award as stated in section 17.0, Notice of Award, on page 00100-10? If so, why not state the time frame required in section 6.02?

**10.01 Subcontractors, Suppliers, and Others, 00100-5:**

The text states, "The persons or firms selected by the CONTRACTOR for Subcontract services, supplies, or goods at a cost of \$25,000 or more shall be listed ....."

Why \$25,000?

**10.01 Subcontractors, Suppliers, and Others, 00100-5:**

".....or more shall be listed on Document 00430 and or Document 00452, as applicable and submitted with his Bid proposal. For each item of Work with a cost of \$25,000 or more, the Contractor shall obtain a minimum of three bids from qualified bidders. The bidders shall, insofar as practical, identify each element of the work to be subcontracted and estimate the percentage of the total work which that element represents."

What happens if three bidders are not received? Do you reject bids? How do you verify?

**Document 00300: Bid Form, #5.pg. 00300-4:**

"..Work will not be broken down into separate contracts. All work

will be performed under a single Contract."

Is the BSSC a tax exempt entity? If so, to be legal, contract should be broken down to determine which items are taxable (i.e., labor, materials, equipment) in the state of Texas.

Document 00300: Bid Form, #6. BIDDER agrees that the Work: pg. 00300-4:

"...will be substantially complete within 720 calendar days (24 months) after Notice to Proceed and completed and ready for final payment within 750 (25 months) calendar days after Notice to Proceed."

The timeframes listed in this version (11/20/91) of the Bid Documents differ by an increase of 180 days (6 months) from the timeframes listed in the 8/28/91 Bid Document Submittal. These new timeframes exceed the schedule outlined in Appendix E (Statement of Work) of the Consent Decree. Section VII (SCHEDULE of the Statement of Work), states that the due date for Remedial Action Completion shall be "21 months after executing contracts". The schedule also states, "this due date to be reviewed and modified by mutual agreement of the project coordinators after receipt of the bids and before beginning remedial action." Please revise the text so that it complies with the Consent Decree (Statement of Work - VII. Schedule).

Document 00410: Bid Bond Form pg. 00410-1

Is it stated anywhere that the security must be licensed in Texas?

Document 00430: Proposed Subcontractor List pg. 00430-1

Should it state the \$25,000 minimum for listing?  
This amount stated in the previous submittal was \$10,000.

Document 00455, Figure 1, Page 1 of 2

Figure I  
Bailey Disposal Site  
Unit Price Schedule

This form is not consistent with document 00300. It does not include figures  
(\$ ).

Document 00680: Application for Payment pg. 00680-1

COMMENT: How are quantities to be verified?

Article 1 Definitions, Bullet 14. Contract Documents pg. 00700-3:

All written documents that define the construction Work and the obligations of the BSSC and Contractor. The Contract Documents include the following:

What about prequalification document?

Page 00700-5, bullets g, and i:

The text will need to be revised to indicate that the 11/91 versions of the Emission Control Plan, and the Quality Assurance Plan (QAPP) will be used. The latest version (11/91) of the Sampling and Monitoring Plan has not been completed yet (See EPA comments on page 1).

Page 00700-7, #24, Extra Work:

"...timing, mobilization, or other factors (Section 807, Cost Adjustments for Extra Work, of the General Conditions).

The correct reference is Section 804. There is no section 807 of the General Conditions in this revision.

Page 00700-7 #27. Force Account Work:

Work not provided for in the contract and not bid upon by the Contractor, but is essential to the satisfactory completion of the Contract within its intended scope.

How do you effect this and who performs this work and by what document?

804. Cost Adjustments for Extra Work pg. 00700-63

A. Labor

The contractor shall receive the rate of wage agreed upon in the bid proposal for all labor employed in performing the extra Work. If the extra Work required labor for which the rate of wage was not earlier established in the bid proposal, the Contractor will receive the rate of wage agreed upon in writing by the BSSC before

beginning the extra Work.

**COMMENT:** Where in the bid proposal?

If the BSSC and Contractor are unable to agree upon an acceptable rate of wage before beginning the extra Work, the Contractor shall perform the Work and will be paid at the hourly rates as certified by payroll records, plus 12 percent. The certified payroll record shall include the employee's hourly rate and all fringe benefits resulting from collective bargaining units (trade unions). The 12 percent loading factor shall not be applied to the fringe benefits. The 12 percent loading...

The above sentence should stop after benefits.

D. Other Miscellaneous Expenses, pg. 00700-64:

The Contractor shall be reimbursed for the actual cost of other services or expenditures including, without limitation, as agreed upon by the parties before the extra Work is begun, use of material testing laboratories, employment of design professionals and surveyors, Bond premiums, and any other cost directly related to accomplishment of the extra Work but not provided for in other categories in this Section. Additional allowance shall not be made for overhead, general superintendence, the use of small tools, further profit, or any other cost for which no specific allowance is provided herein.

How about supervision, legal, etc.? If you have this clause, why have 8% overhead of materials and labor?

Article Two: Introductory Provisions, Section 201. WORK:

"... The work will be conducted within 750 days (25 months) after the Effective Date of the Contract Agreement, ..."

As stated in Article Four: Term, section 401 (Construction Progress Schedule):

Pursuant to the requirements of the Consent Decree between the BSSC and EPA, the BSSC and EPA have established deadlines for the construction and implementation of the Work required by the Contract Documents that identifies timing for initiation and completion of critical path tasks. In addition, the BSSC is required to adhere to the dates set forth in the Consent Decree.

In appendix E of the Consent Decree (Statement of Work), section VII (Schedule), under the activity, Remedial Action Completion, the due date is stated as, "21 months after executing contracts." This

is a requirement of the Consent Decree and will need to be incorporated into this document. However, the schedule also states, "This due date to be reviewed and modified by mutual agreement of the project coordinators after receipt of the bids and before beginning remedial action."

Article Two: Introductory Provisions, Section 201. EPA PROJECT MANAGER:

In addition to the responsibilities/authorities listed in this section, please add the following:

The EPA Project Coordinator shall have the authority vested in the Remedial Project Manager and the On-Scene Coordinator by 40 C.F.R. Part 300 (1987), and the authorities as outlined in Section IX. PROJECT COORDINATORS, B (1) of the Consent Decree.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

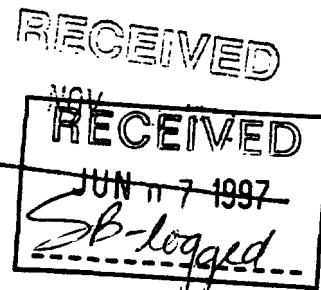
1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202

November 2, 1991

Mr. Mark McDonnell  
Fluor Daniel, Inc.  
12790 Merit Drive, Suite 200, LB 169  
Dallas, Texas 75251

PROJ. # 06639606  
FILE \_\_\_\_\_  
HEADING Comment / FD  
Org. WPlan / OS of RA



RE: EPA's Comments of Fluor Daniel's Original Work Plan  
for Oversight of Remedial Action Activities at the  
Bailey Waste Disposal Site (WA #06-6P77)

Dear Mr. McDonnell:

Please find attached EPA's comments on Fluor Daniel's work plan for remedial action oversight activities at the Bailey Waste Disposal Site. If, after your review of these comments, you have any questions, please give me a call (214) 655-6735. In addition, please provide me with a copy of Fluor Daniel's Health and Safety Plan for Oversight Activities at the Bailey Waste Disposal Site as soon as possible. It is essential that the Fluor Daniel Oversight Official be able to enter the on site exclusion zones to better observe the sampling and other field activities.

Sincerely yours,

*Chris G. Villarreal*

Chris G. Villarreal  
Remedial Project Manager

Attachment

**EPA'S COMMENTS ON FLUOR DANIEL'S  
ORIGINAL WORK PLAN FOR  
REMEDIAL ACTION OVERSIGHT  
BAILEY WASTE DISPOSAL SITE  
ORANGE COUNTY, TEXAS  
WA# 06-6P77**

Page 4, Section 1.3 Current Status, first paragraph, last two sentences:

Text states, "The treatment area will be capped to prevent migration of any remaining contaminants. Potential short-term air emissions, resulting from remedial activities, will be mitigated as a result of stabilization and capping."

Please remove these sentences and replace with the following:

Stabilization of the waste will minimize the potential for waste migration by blocking the route of transport. The cap over the stabilized waste will prevent direct contact with the stabilized waste. Potential short-term air emissions, resulting from remedial activities, will be reduced by employing in-situ stabilization methods and by operating in small areas.

Page 10, Section 2.2.2, Document Review in Dallas Program Office, first paragraph, second sentence & third paragraph, third sentence:

Text states, "Time is budgeted for on a monthly basis for the project manager and other disciplines in the Dallas program office."

and

"The budget is estimated only since the exact amount of work is unknown."

As provided in Volume II of the work plan submittal, the table on the following page shows the P-level and hours Fluor Daniel estimated for review of ongoing PRP submittals:

# **DIRECT LABOR HOURS**

<b>ONGOING SUBMITTALS</b>	<b>PL2</b>	<b>PL3</b>
Program Manager PL3		54
Project Manager PL2	324	
Water Treatment Engineer PL2	54	
Senior Geotechnical Engineer PL3		54
Health and Safety Specialist PL2	54	
Analytical Chemist PL2	54	
Contract Manager PL3		54
Clerical CL2 (72 hours)		
<b>TOTALS</b>	<b>486</b>	<b>162</b>

*Call Chris*

The following table illustrates P-level hours proposed to review the 10 anticipated PRP submittals (see section 2.1) -vs- the estimated unknown amount of work.

<b>PRP Submittal Review Fluor Dallas Office</b>	<b>10 Anticipated PRP Submittals</b>	<b>Unknown Estimated Amount of Work</b>
PL3 Hours	220	162
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Clerical CL2 Hours	60	72

Based on cost data presented in Volume II of the proposed work plan, the estimated cost for this Unknown Estimate Amount of Work in the Fluor Daniel Dallas program office would be as follows:

PL3 - 162 hours \* (\$\*\*/hour) = -----  
 PL2 - 486 hours \* (\$\*\*/hour) = -----  
 CL2 - 72 hours \* (\$\*\*/hour) = -----  
                     Subtotal = \$-----

Overhead at \*\*\*\*% = \$-----  
 Labor Plus Overhead = \$31,101.84

These hours seem excessive to review Ongoing Submittals (648 P-level hours in total), especially since items identified for review (i.e., review of field sampling data, test results from select fill and aggregate, water effluent analysis, etc.) should be done by the field oversight official. The level of effort proposed for this task will need to be reduced. In addition, more detail needs to be provided as to how the level-of-effort for this task was determined.

G: - mcd04217  
BWD  
1192.2

Page 11, Task 3.0 Attendance at Meetings:

First Sentence:

Text states, "Fluor Daniel will attend all project related meetings and provide the RPM with written meeting notes."

Please remove "all" from this sentence.

Second Sentence:

Text states, "Written notes and minutes of each meeting will be provided to the RPM as soon as possible after each meeting ....."

As stated on page 6 of the RPM's SOW under Section 2.1 (Meetings), "Meeting summaries will be provided to the RPM within two weeks after the meetings."

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Text states, "2) Pre-construction conference at HLA's offices in Houston with two Fluor Daniel Personnel in attendance."

included  
in  
budg.  
• other

This meeting has already occurred. This bullet needs to be removed as well as the budgeted cost for Fluor Daniel to attend this meeting.

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Remove this task and all associated cost with this task (laboratory audit) from the scope of work. This task can be performed by EPA personnel out of the Houston Lab.

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Text states, "Fluor Daniel is required to be present during all required sampling ..." Since a majority of the borings and some of the trenching has already occurred, please remove the word "all" from the text.

In addition, please provide the EPA RPM with Fluor Daniel's Health and Safety Plan AS SOON AS POSSIBLE so that the Fluor Daniel Oversight Official will be able to enter the on site exclusion zones to better observe the sampling and other field activities.

## VOLUME II - CONFIDENTIAL BUSINESS INFORMATION

### Attachment "A"

#### Task 2, Review of PRP Submittals, Ongoing Submittals

- discussed previously

#### Task 3.0, Attendance at Meetings

The non-labor cost listed are:

Transportation - \$2,322.00  
Per Diem - \$1,056.00  
Other Direct - \$700.00

Also listed is 260 hours - PL2 estimation.

These hours and cost need to be broken out in more detail. For example, list the estimated number of trips to Houston, how many person attending meeting, per diem per trip, and what makes up the \$700.00 in Other Direct Cost. *put in text "other"*

In addition, as discussed previously, since the Pre-construction conference has already occurred, the budgeted hours and cost for Fluor Daniel to attend this meeting will need to be removed.

#### Task 4.0, Oversight of Field Work:

As discussed in a conversation between the EPA RPM and Mark McDonnell on 10/22/92, the 304 hours estimated for the Project Manager PL2 will need to be reduced to coincide with the estimated 18 months of RA field activities.

Please explain if the field oversight official will be claiming the full lodging per diem of \$40.00/day (for Port Arthur/Beaumont area) or will the oversight official try to save the government some cost by trying to obtain a reduce lodging rate due to the extended period the oversight official will be in the area. For example, the PRP oversight contractor's have negotiated a reduced lodging rate of \$22.00 per room/day with the local Best Western Hotel in order to reduce project cost.

#### Task 5.0, Split Sampling, Laboratory Data Validation and System Audits

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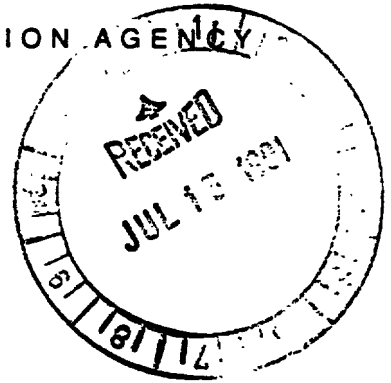
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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202-2733

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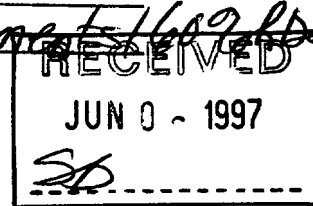
Bailey Task Force Administrator  
c/o Debra L. Baker  
Fulbright & Jaworski  
1301 McKinney Street  
Houston, Texas 77010

PROJ. # 16639606

FILE \_\_\_\_\_

HEADING Comments 60% Remedial Design

Re: Bailey Waste Disposal Site  
Comments on 60% Remedial Design



Dear Ms. Baker:

This letter transmits the Environmental Protection Agency's comments on the 60% Remedial Design for the Bailey Waste Disposal site. If you have any question, please contact me.

Sincerely,

  
John C. Meyer  
Superfund Enforcement

Enclosure

cc: ✓ Mark deLorimier, Fluor Daniel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202

800

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NOV 1991

November 2, 1991

Mr. Mark McDonnell  
Fluor Daniel, Inc.  
12790 Merit Drive, Suite 200, LB 169  
Dallas, Texas 75251

PROJ. # 86639606

FILE

HEADING

RECEIVED

JUN 0 1997

SB

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Attachment

1991 EPA  
~~Jan~~ Corrie



**EPA'S COMMENTS ON FLUOR DANIEL'S  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

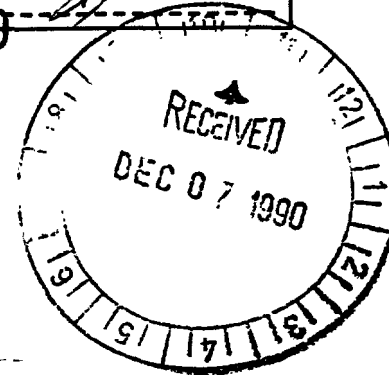
PROJ. # 06639606 REGION 6  
1445 ROSS AVENUE SUITE 1200

FILE \_\_\_\_\_ DALLAS TEXAS 75202-2733

HEADING Comments/Project  
Support Plans DEC 5 1990

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JUN 16 1997



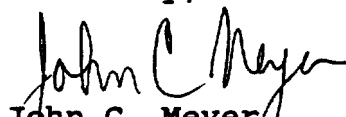
Bailey Task Force Administrator  
c/o Debra L. Baker  
Fulbright & Jaworski  
1301 McKinney Street  
Houston, Texas 77010

Re: Bailey Waste Disposal Site  
Comments on Project Support Plans --

Dear Ms. Baker:

This letter transmits the Environmental Protection Agency's comments on the project support plans for the Bailey Waste Disposal site. Finalization of many of the plans that were reviewed will need to occur later in the design process as discussed earlier. When that is obvious, the EPA's comment will note that. There are comments, however, that EPA has made without being sure if they can be responded to at this point in the design process. I suggest that following your review of the enclosed comments, a meeting or teleconference be scheduled to determine which plans can be finalized. Any extension of time for revisions to the project support plans will not in any way extend the due dates for the 60% and subsequent design submittals.

Sincerely,

  
John C. Meyer  
Superfund Enforcement

Enclosure

cc: Pat Steerman, BFI  
✓ Mark deLorimier, Fluor Daniel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE SUITE 1200

DALLAS, TEXAS 75202-2733

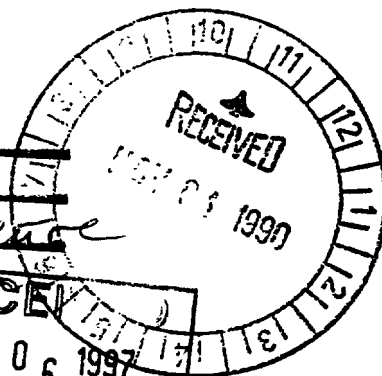
OCT 29 1990

Bailey Task Force Administrator  
c/o Debra L. Baker  
Fulbright & Jaworski  
1301 McKinney Street  
Houston, Texas 77010

OJ. # 06639606

READING

Force Majeure  
Notification



Re: Bailey Waste Disposal Site  
Force Majeure Notification

Dear Ms. Baker:

The Environmental Protection Agency received a notice of a force majeure condition from the Bailey Task Force on October 10, 1990. The notice claims that an event occurred at the laboratory performing the analytical work that may cause a delay in the In-Situ Waste Stabilization Evaluation Report. The letter requested a two week extension for the delivery of this report.

A review of the monthly report submitted on October 9, 1990, indicates that the delay occurred on or before September 17, 1990. Section XXII.B. of the Consent Decree states that notice of a force majeure event should be made no later than ten days from the time information is obtained that a delay has or will occur. Failure to notify the EPA within ten days constitutes a waiver of any claim of force majeure. Therefore, your claim of force majeure is not accepted by EPA.

EPA is willing to work with the Bailey Task Force, however, in developing an acceptable schedule to complete the stabilization evaluation study. Certain problems in the stabilization evaluation have been brought to EPA's attention that might require additional time to rectify. John Meyer will be in contact with you to develop an acceptable schedule to complete the study.

If you have any questions, please contact John Meyer at (214) 655-6735.

Sincerely,

Sam Becker, Chief  
Superfund Enforcement Branch

cc: Mike Barra (6C)  
Mark deLorimier, Fluor Daniel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202-2733

PROJ. # \_\_\_\_\_

FILE \_\_\_\_\_

READING \_\_\_\_\_

July 17, 1990

Bailey Task Force Administrator  
c/o Debra L. Baker  
Fulbright & Jaworski  
1301 McKinney Street  
Houston, Texas 77010

Re: Bailey Waste Disposal Site  
Comments on QA/QC Plan

Dear Ms. Baker:

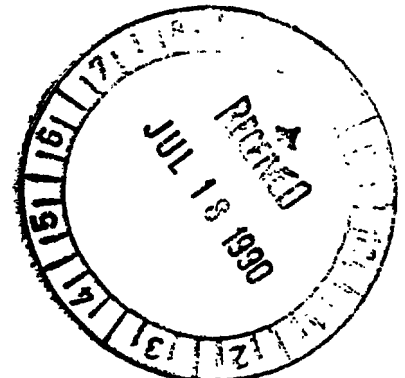
Enclosed are the Environmental Protection Agency's comments on the draft QA/QC Plan. If you have any questions, please contact John Meyer.

Sincerely,

Sam Becker, Chief  
Superfund Enforcement Branch

Enclosure

cc: Mike Barra (6C)  
Mark deLorimier, Fluor Daniel





COMMENTS ON  
BAILEY WASTE DISPOSAL SITE  
QA/QC PLAN

Page 15, Table 2 - This table may have to be modified based on the final ISEWP.

Page 36, Section 5.1 - Shipment of the samples to the laboratory should take place within 24 hours, not "as soon as practical".

Page 36, Section 5.2 - This section should include provisions for equipment rinsate blanks to determine effectiveness of decon procedures.

Section 6.0 - This section should be revised based upon procedures in the document NEIC Policies and Procedures, Revised May 1986, EPA-330/9-78-001-R. More detail is necessary for the chain of custody procedures.

Page 50, Section 8.2 - Even though non-EPA methods may not have specific QA/QC procedures, this does not preclude the use of duplicate analysis and multiple reading to ensure precision and accuracy.

Section 11.0 - There is no mention of conducting a performance audit nor is there a description of a performance audit.

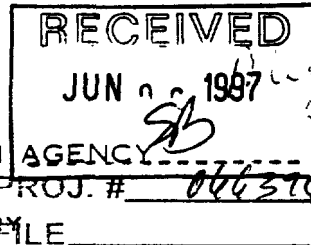
Appendix B - The procedures for the Immersion Test should be included.

The compressive strength test (ASTM D2166) is missing.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF RESEARCH AND DEVELOPMENT  
RISK REDUCTION ENGINEERING LABORATORY

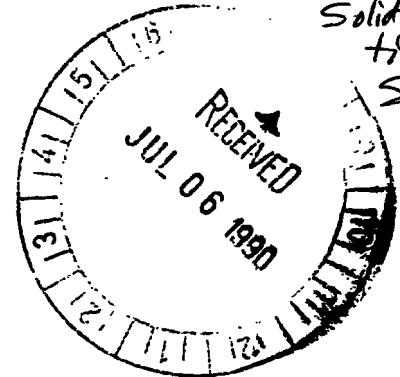
CINCINNATI, OHIO 45268



FILE

RECEIVED JUN 14 1990  
PROJECT # 06637606  
SHEADING Comments/Bailey  
Solidification/Stabilization

DATE: June 14, 1990  
SUBJECT: Comments on Bailey Waste Disposal Site  
Solidification/Stabilization  
FROM: Carlton Wiles  
Solidification Technology Team Leader  
TO: John Meyers  
EPA, Region 6



This is a follow-up to our recent telephone discussion concerning the proposed solidification at the Bailey Waste Disposal site. The following comments are based on these discussions and the information about site conditions that has been provided to me. These conditions are:

1. The contaminates levels currently at the site are not a health risk, and the remedial action is being done for the purpose of improving the environmental conditions.
2. None of the contaminates has been observed in the water monitoring wells and/or other samples. Therefore, the contaminates are not currently mobile, or the fractions that were mobile have already migrated away from the site.
3. The main purpose of the solidification/stabilization (s/s) operation is to solidify the contaminated material in a manner that will not increase the potential migration of any contaminates or increase their concentrations. The solidified mass will remain in or under the water table (marshland).

My comments are:

Steps should be taken to assure that any changes in the redox conditions which may result from the remediation activity (s/s) do not increase the mobility of the contaminates, particularly the metals. Quite often contaminated soils/sediments in harbors, etc. have reached a redox condition which has stabilized the contaminates and placed them in the least mobile state. The dredging and/or other actions which expose this material to higher oxygen levels could adversely affect the redox levels and the mobility of selected constituents.

Be aware that the use of fly ash, cement kiln dusts and similar by-product materials in the s/s process may add to or increase the levels of unwanted metals in the final product. Be sure to analyze for this situation to assure that the resulting product is acceptable.

The levels of the organics are extremely low and based upon our discussions, organic emissions are probably not of concern. If, however, you want to assure that the s/s process does not increase organic levels in leachates from the final product, you will need to analyze for this situation. Be aware that the TCLP may not be a good test to determine this. Also be aware of potential volatilization of organics during the s/s process. If not accounted for, volatilization may give some false readings. If you are not concerned about organic emissions during the s/s process but still want to assure the organic levels have not been increased in the final product as compared to the untreated material, I recommend that you use a total waste analysis for the organics on the untreated material and then on the treated product. Calculations must take into account any dilutions caused by the s/s additives. This is a worst case, conservative approach but is, I believe, the only technically correct one at present. If emissions are of concern, then you will need to collect and analyze for them.

Because the solidified product will be subjected to wet conditions, I recommend that testing be done to simulate this condition and to provide information on how well the solidified waste will maintain its integrity. I recommend that permeability testing be conducted on the treated material. Also, I recommend that the treated solidified waste forms be subjected to unconfined compressive testing, followed by an immersion test, followed by unconfined compressive testing as this will provide information on how well the solidified sample can be expected to withstand the environmental stresses present at the disposition site. The fluid used in the immersion test can be either the salty water in the marsh or distilled, deionized water or both. I recommend that the salty water be used. If desired, to determine potential migration of contaminants from the solidified waste forms during the static immersion test, use the distilled deionized water and analyze for contaminants of concern.

Note that there are salt resistant cements or additives on the market. These should be considered in designing the mix if the salt levels are such that they will cause excessive degradation to the solidified product.

These are brief comments and I believe we have discussed most of them. More details are available if required.

cc: J. Colson  
B. Blaney  
R. Hill



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202

JUN 14 1990


Bailey Task Force Administrator  
c/o Debra L. Baker  
Fulbright & Jaworski  
1301 McKinney Street  
Houston, Texas 77010

Re: Bailey Waste Disposal Site  
Comments on Work Plan Submittals

Dear Ms. Baker:

Enclosed are the Environmental Protection Agency's comments on the Remedial Design Work Plan and the In-Situ Stabilization Evaluation Work Plan. If you have any questions, please contact John Meyer.

Sincerely,

  
Sam Becker, Chief  
Superfund Enforcement Branch

Enclosure

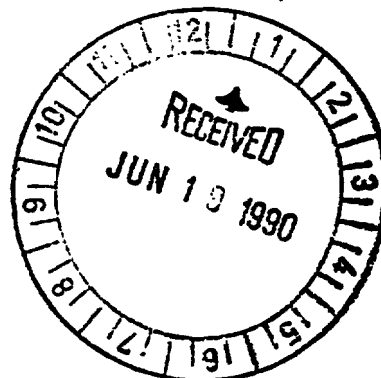
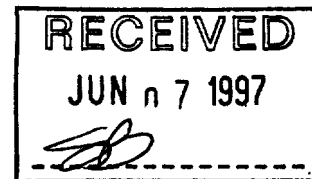
cc: Mike Barra (6C-S)  
/ Mark deLorimier, Fluor Daniel

June 14, 1990

PROJ. # 060306

FILE

HEADING Comments/  
WPlan Submittals





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI

ALLIED BANK TOWER AT FOUNTAIN PLACE  
1445 ROSS AVENUE  
DALLAS, TEXAS 75202

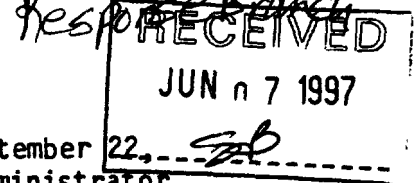
November 13, 1987

SUBJECT: How to File a CERCLA Lien

FROM: Bennett Stokes *[Signature]*  
Associate Regional Counsel

TO: Attorneys and Paralegals  
Solid Waste and Emergency Response Branch

PROJ. # 06639606  
FILE \_\_\_\_\_  
HEADING Attorneys / Paralegals  
Solid Waste & Emerg.  
Response Branch



I believe that most of you have received copies of the September 22, 1987, Guidance on Federal Superfund Liens from the Assistant Administrator for Enforcement and Compliance Monitoring. That guidance has attached to it a sample lien which was prepared by Region 10. In my opinion, that form is not very good. I have prepared a new form for use in Texas, which I believe will be satisfactory. It is designed for the signature of the Regional Administrator and is in affidavit form. It can be filed with the County Clerk in Texas, where the real property records are filed.

In the future, when CERCLA liens are to be filed, please use the attached form, unless you have reviewed the state law and found that another form would be better in that state, and then only after you and I have discussed it. In addition, please use the following procedure:

1. Prepare a briefing sheet for the Regional Administrator, with concurrences on the bottom from Stokes, Neet, the assigned technical person, the program section chief, the program branch chief, and Al Davis. Hand-carry the lien notice and the briefing sheet to the Regional Administrator and explain to him what he is being asked to sign.
2. Have the Regional Administrator sign the affidavit before a Notary Public. Helen Thompson is preferred.
3. Affix the EPA seal next to the Regional Administrator's signature. Helen Thompson has this seal.
4. Have the Notary sign and seal the document.
5. In Texas, file the document with the County Clerk where the real property is located. In other states, determine whether federal liens can be filed in the state's deed recording office and what that office is. If they can be filed with the state, file them there. If they can not be filed with the state, file them with the U.S. District Clerk in the District where the real property is located. You should call and discuss the filing with the District Clerk before sending the Clerk a lien notice.

6. Some states will have assess fees for filing lien notices. You should determine whether federal liens are subject to filing fees and obtain that sum from the Management Division before going to the filing office, or arrange for a check to accompany the lien when mailing it.

7. Make copies of the signed lien notice before it is filed. Copies of the notice should be given to the following:

- a. The Regional Administrator's file when he signs it.
- b. The Regional Counsel's CERCLA Lien file, which I have.
- c. The program's official file for the site.
- d. The OECM file, which is maintained by Allen Danzig. Mail him a copy as soon as it is filed.
- e. Each of the persons mentioned in the notice, with a letter of transmittal signed by the attorney.

8. By your concurrence, you are certifying to the Regional Administrator that you have thoroughly checked every statement on the lien notice and that you found adequate supporting evidence in the official file. Also, do not allow silly errors to be in the notice. Note that the form attached to the guidance has been signed by John Hamill, Acting Regional Counsel, but the Notary has certified that it was signed by James Moore, the Regional Counsel.

9. If you feel that changes would improve the form, please let me know so that we can consider it together. Improvements are always welcome.

cc: Allyn Davis  
Robert Hannesschlager  
Carl Edlund  
Larry Wright  
Hilton Frey



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI

ALLIED BANK TOWER AT FOUNTAIN PLACE

1445 ROSS AVENUE

DALLAS, TEXAS 75202

THE STATE OF TEXAS

COUNTY OF \_\_\_\_\_

AFFIDAVIT AND NOTICE OF STATUTORY FEDERAL LIEN

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, who, after being duly sworn, upon oath said and deposed the following:

1. My name is \_\_\_\_\_, and I am the \_\_\_\_\_ for the Region VI office of the United States Environmental Protection Agency. In my official capacity as \_\_\_\_\_, I know that the following facts are true.

2. The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, provides in Section 107(1), 42 U.S.C. §9607(1), that

(1) All costs and damages for which a person is liable to the United States under subsection (a) of this section (other than the owner or operator of a vessel under paragraph (1) of subsection (a) of this section) shall constitute a lien in favor of the United States upon all real property and rights to such property which --

(A) belong to such person; and

(B) are subject to or affected by a removal or remedial action.

3. The files of the United States Environmental Protection Agency, Region VI, contain credible official documents which show that the following real property is subject to or affected by a removal or remedial action, all or part of which was commenced before this date:

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4. The files of the United States Environmental Protection Agency, Region VI, contain credible official documents which show that the previously described real property or rights to such property belong to the following persons:

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5. The files of the United States Environmental Protection Agency, Region VI, contain credible official documents which show that the previously listed persons are liable to the United States of America, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a), for at least the following amount of money:

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6. IN WITNESS WHEREOF, the United States of America has caused this instrument to be executed through the United States Environmental Protection Agency, as evidenced by my signature and the seal of the United States Environmental Protection Agency.

Dated at Dallas, Texas, this \_\_\_\_\_ day of \_\_\_\_\_.

UNITED STATES OF AMERICA  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_  
(title)

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
Dallas County, Texas

My Commission expires \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

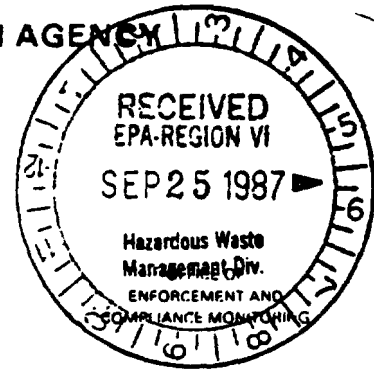
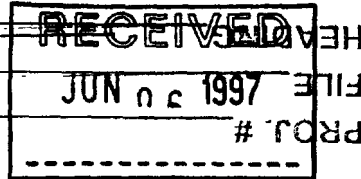
PROJ. # 06139606

SEP 22 1987

FILE \_\_\_\_\_

HEADING Guid.

of Federal Superfund  
Liens



MEMORANDUM

SUBJECT: Guidance on Federal Superfund Liens

FROM: Thomas L. Adams, Jr.  
Assistant Administrator

*Thomas L. Adams*

TO: Regional Administrators, Regions I-X  
Regional Counsels, Regions I-X  
Directors, Waste Management Division,  
Regions I-X

The purpose of this memorandum is to establish guidance on the use of federal liens to enhance Superfund cost recovery. Section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), adds a new Section 107(1) to CERCLA, which provides for the establishment of a federal lien in favor of the United States upon property which is the subject of a removal or remedial action.

This guidance provides: (1) analysis of statutory issues regarding the nature and scope of the lien, (2) policy on filing a federal lien to support a cost recovery action, and (3) procedures for filing a notice of lien and taking an in rem action to recover the costs of a lien. Attached to the guidance is an example of a notice of a Superfund lien.

I. STATUTORY BACKGROUND AND ISSUES

A. Property Covered by Lien

Section 107(1) of CERCLA provides that all costs and damages for which a person is liable to the United States in a cost recovery action shall constitute a lien in favor of the United States upon all real property and rights to such property which (1) belong to such person and (2) are subject to or affected by a removal or remedial action. The lien applies to all property owned by the PRP upon which response action has been taken, not just the portion of the property directly affected by cleanup activities. The House Judiciary Committee Report on the lien

provision in H.R. 2817 (p. 18), which was enacted as part of SARA, states that "the lien should apply to the title to the entire property on which the response action was taken." At the same time, the Report notes that "it is not intended to extend the lien to the title of other property held by the responsible party." Id.

The lien provision is designed to facilitate the United States' recovery of response costs and prevent windfalls. "A statutory lien would allow the Federal Government to recover the enhanced value of the property and thus prevent the owner from realizing a windfall from fund cleanup and restoration activities." 131 Cong. Rec. S11580 (Statement of Sen. Stafford) (September 17, 1985). See also House Energy and Commerce Report on H.R. 2817, p. 140, indicating that one of Congress' primary purposes in enacting the lien provision was to prevent unjust enrichment.

#### B. Duration and Effect of Lien

The federal lien arises "at the later of the following: (A) the time costs are first incurred by the United States with respect to a response action under [SARA, or] (B) the time that the person is provided (by certified or registered mail) written notice of potential liability." (Emphasis added) (§107(1)(2)). EPA may send out two different types of notice letters to PRPs. The first, a general notice letter, will be sent early in the process notifying the recipient that he or she has been identified as a party who may be responsible for cleanup of the site or for the costs of cleanup. In addition, the Agency may send a subsequent "special" notice which will invoke and commence the settlement procedures in Section 122 of SARA. The first of those letters will satisfy the notice of potential liability required for the federal lien to arise, assuming that it does give the PRP notice of potential liability for cleanup of costs, and is forwarded by certified or registered mail.

It is EPA's position that the lien provision applies to costs incurred prior to and after passage of SARA. The lien also applies to all future costs incurred at the site. The lien continues "until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113." (§107(1)(2))

#### C. Priority of Federal Lien In Relation to Other Property Liens

The federal lien is "subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of

the federal lien has been filed [by EPA]." (§107(1)(3)) Thus, the unfiled federal lien is subordinate to rights that are perfected under applicable State law before EPA files notice of its federal Superfund lien. After EPA files notice of the federal lien, the United States establishes its priority ahead of known and potential purchasers, holders of security interests, and judgment lien creditors whose interests have not been perfected.

During deliberation on the Superfund amendments, Congress considered a provision in H.R. 2005 [S. 51] which provided for constructive notice of an EPA lien. Under that provision, if EPA failed to file its notice of lien in a timely fashion, the EPA lien would nonetheless have had priority over a third party lien which was filed prior in time if the third party had or reasonably should have had actual knowledge that EPA had incurred costs which would have given rise to a lien. See Environment and Public Works Report on S. 51, p. 45. Thus, since this provision was ultimately deleted from the Act, EPA must file its lien in order to achieve priority over any other secured parties, and cannot rely on constructive notice.

#### D. State Superfund Liens

Most States have passed "Superfund" statutes similar to the federal law. However, a State Superfund lien only applies to response work paid for by a State. Some of the State statutes, such as those in Massachusetts, New Hampshire, New Jersey, Arkansas and Tennessee, contain "superlien" provisions which provide that any expenditures made pursuant to the statute constitute a first priority lien upon the real property of a hazardous waste discharger. Several other States provide that expenditures from the hazardous waste fund will constitute a lien in favor of the State, although not a first-priority lien.

### II. POLICY ON FILING FEDERAL LIENS IN COST-RECOVERY ACTIONS

EPA has the authority to file notice of a lien on any real property where Superfund expenditures have been made. Regional offices should carefully evaluate the value of filing notice of a lien whenever the Agency has identified a landowner as a potentially liable party under Section 107. Filing of notice of the federal lien will be particularly beneficial to the government's efforts to recover costs in a subsequent Section 107 action in the following situations:

- (1) the property is the chief or the substantial asset of the PRP;
- (2) the property has substantial monetary value;

- (3) there is a likelihood that the defendant owner may file for bankruptcy. See Revised Hazardous Waste Bankruptcy Guidance, Office of Enforcement and Compliance Monitoring, May 23, 1986;
- (4) the value of the property will increase significantly as a result of the removal or remedial work; or
- (5) the PRP plans to sell the property.

Regional offices should not file notice where it appears that the defendant satisfies the elements of the innocent landowner defense pursuant to Section 107(b)(3).

Where existing perfected non-Superfund liens on the property equal or exceed the value of the property as enhanced by the Superfund expenditures, it may not be worthwhile to file notice of the federal lien. However, in some cases, a foreclosing party, such as a bank, may take over the property, and EPA may believe that the foreclosing party is liable under Section 107. See United States v. Maryland Bank and Trust Co., 632 F. Supp. 573 (D. Md. 1986). In such cases, EPA should file a lien as to the foreclosing party after foreclosure and after other acts creating liability have taken place.

Pursuant to Section 545(2) of the Bankruptcy Code, a lien unperfected as of the time of filing of the bankruptcy petition will be invalidated by the bankruptcy trustee. Thus, where there is a likelihood of a bankruptcy filing, notice of the Superfund lien should be filed as early as possible. Finally, note that filing notice of the lien is not subject to pre-enforcement review of the liability of the landowner for the response costs.<sup>1/</sup>

### III. PROCEDURES FOR FILING LIENS

Notice of the federal lien should be filed at the time that the owner is provided notice of potential liability. By this time, the lien will have arisen since EPA will have incurred costs, e.g.,

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<sup>1/</sup> Courts have rejected claims that owners are entitled to notice and hearing prior to filing of the lien. In Spielman Fond, Inc. v. Hanson's Inc., 379 F. Supp. 997 (D. Ariz.) (3 judge court), summarily aff'd, 417 U.S. 901 (1974), the court held that filing of a mechanic's lien did not amount to a taking of significant property without due process, since it did not prohibit the transfer of title. Subsequent court decisions have followed this holding. See, e.g., B & P Development v. Walker, 420 F. Supp. 704 (W.D. Pa. 1976).

in conducting a PRP search. The government's priority will relate back to the date that the notice of the lien was filed. See Uniform Commercial Code, §9-312(5)(a). Unlike some State Superfund lien provisions, Section 107 does not establish a deadline by which notice must be filed.

A. Preparing the Notice

Regional enforcement personnel should refer to State requirements for filing notice of the lien. We encourage the Regions to work with State Attorney General Offices to assure that the Regions accurately interpret State law, and to consult with OECM and DOJ in determining whether to file notice of the lien.

Notice should generally include: (1) the name of the property owner, (2) a precise legal description of the property on which the lien will arise, (3) an explanation by the Regional official of the basis for the lien, (4) the address of the Regional Administrator or other Regional official delegated authority to sign notices of liens, and (5) a provision that the lien shall remain until all liability is satisfied. The notice should cite CERCLA Section 107(1) and be notarized with the Agency seal.

Notice may also include such information as: (1) the amount of fund expenditures upon which the lien is claimed and (2) a description of labor performed and materials supplied, including dates. However, since the statute does not require specification of costs, the notice should clarify that, where response work is ongoing, the amount of the lien will increase as the costs incurred increase. The property description to be included in the notice of the lien should be the legal description (i.e., metes and bounds, or lot, block and subdivision) rather than a general post office or street address. We have attached an example of a notice of a federal lien.

Under the recent SARA delegation, the Regional Administrator has been delegated authority to sign the notice of filed lien. The Regional Administrator may redelegate this authority at his/her discretion.

B. Where to File

To establish its priority among other secured parties and creditors, EPA must file notice of the lien "in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located." (§107(1)(3))

Where the State has designated an office, such as a County recording office, the lien should be filed in that office. This will likely be the same office where State Superfund liens are filed or where general real property liens, e.g. mechanic's liens, are filed. "If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located." (§107(1)(3))

Where there is any doubt as to the designated State office, the lien should be filed both in the office of the clerk of the United States district court for the district in which the real property is located and in the most appropriate local office for recording property interests. Filing in the appropriate local office is important, since parties with an interest in the property are more likely to review liens in the local office than in federal district court.

#### IV. IN REM ACTIONS FOR RECOVERING COSTS CONSTITUTING THE LIEN

Under Section 107(1)(4), "[t]he costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred." An in rem action is an action against the property of the PRP. In order to institute a proceeding in rem, the property must "be actually or constructively within the reach of the court." 36 Am. Jur. 2d Forfeitures and Penalties §28 (1968). By contrast, the typical cost recovery action is an in personam action against the PRP.

In rem actions should be considered where the litigation team believes that an action to recover costs covered by the lien will enhance its efforts to recover all costs incurred in a response action. Such actions will be particularly useful where the property constitutes a significant asset of the PRP, and where the government is having difficulty reaching an expeditious cost recovery settlement. The in rem action, which will seek an order directing sale of the property,<sup>2/</sup> should generally be combined with an in personam action for costs. Before bringing an in rem action, the regional office should consider the amount of the claim, the

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<sup>2/</sup> An in rem action may be delayed by an automatic stay, obtained in a bankruptcy proceeding, which serves to stay "any act to create, perfect, or enforce any lien against property of the estate." (Emphasis added) 11 U.S.C. §362(a)(4). The automatic stay also prohibits perfection of a lien, through filing notice of the lien, against a bankruptcy debtor.

condition of the site after the response action and the likely marketability of the site. Note that an in rem action will require the same elements of proof as any cost recovery action.

Section 107(1)(4) further states that "[n]othing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section." Thus, where the government seeks to enforce the federal lien, it is not precluded from recovering the balance of its response costs directly from the landowner or any other liable party.<sup>3/</sup>

#### DISCLAIMER

This memorandum and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this memorandum or its internal implementing procedures.

Attachment

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<sup>3/</sup> Moreover, after EPA obtains a judgment, it should consider using state judgment lien provisions, which may cover all real property of the debtor.



NOTICE OF FEDERAL LIEN

NOTICE IS HEREBY GIVEN by the United States of America that it holds a lien on the lands and premises described below situated in the State of Washington, as provided by Section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, amending the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9601 et seq., to secure the payment to the United States of all costs and damages covered by that Section for which Western Processing Company, Inc. and Garret J. Nieuwenhuis (and the marital community composed of himself and his wife) are liable to the United States under Section 107(a) of CERCLA as amended. The lien for which this instrument gives notice exists in favor of the United States upon all real property and rights to such property which belong to said persons and are, have been, or will be, subject to, or affected by, removal and remedial actions as defined by federal law, at or near 7215 South 196th in the City of Kent, County of King, State of Washington, including the following described land:

That portion of the Southeast Quarter (S.E. 1/4) of the Northwest Quarter (N.W. 1/4) of Section One (1), Township Twenty-Two (22) North, Range Four (4) East, Willamette Meridian, lying Westerly of the Puget Sound Electric right-of-way less than North Thirty (30) feet of Drainage Ditch No. One (1), containing 12.9 acres more or less.

This statutory lien exists and continues until the liability for such costs and damages (or for any decree or judgement against such persons arising out of such liability) is satisfied or becomes unenforceable through the operation of the statute of limitations as provided by Section 113 of Public Law 99-499.

IN WITNESS WHEREOF, the United States has caused this instrument to be executed through the United States Environmental Protection Agency, and its attorney, in his official capacity as Regional Counsel of the United States Environmental Protection Agency, Region 10.

Dated at Seattle, Washington, this 23d day of January, 1987.

UNITED STATES OF AMERICA and  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

United States Of America)  
State of Washington ) ss  
County of King )

By: John T. Hamill, Acting  
James R. Moore  
Regional Counsel  
U.S. EPA, Region 10

On this 23d day of JANUARY, 1987, there appeared personally before me, the undersigned Notary, James R. Moore, known to me to be the Regional Counsel of the United States Environmental Protection Agency, Region 10, and he acknowledged that he signed the foregoing NOTICE OF FEDERAL LIEN in a representative capacity as the free and voluntary act and deed of the United States and its said Agency for the uses and purposes therein mentioned. GIVEN under my hand and official seal the day and year first stated above.

Valerie D. Bidan  
NOTARY PUBLIC in and for the State  
of Washington residing at Seattle

My Commission Expires: 12/7/90

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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

June 23, 1994

Ms. Debra L. Baker  
Bailey Task Force Administrator  
Mayor, Day, Caldwell & Keeton, L.L.P.  
700 Louisiana, Suite 1900  
Houston, Texas 77002-2778

Re: Bailey Site: Waste Water Treatment Sampling

Dear Ms. Baker:

In your letter dated June 20, 1994, you discussed current problems associated with recent heavy rains at the site. Specifically, you stated that "recent heavy rains have resulted in ponding of water within the East Dike that may exceed the capacity of the water treatment plant" and that "this backlog may make it difficult for the Committee's contractors to effectively manage any additional rainfall." In an effort to expedite treatment of the ponded water, the Bailey Site Settlers Committee (BSSC) requested that EPA allow a temporary waiver of the initial sampling requirement (Part 3.04A of the Technical Specifications) until the backlog of water to be treated is eliminated. EPA has evaluated the BSSC's request, and after conferring with the Texas Natural Resource Conservation Commission, has decided to grant your request for a temporary waiver of the initial sampling requirement (Part 3.04A). EPA's temporary waiver of the initial sampling requirement will be immediately rescinded when/if any of the following occur:

- The planned Stabilization Field Pilot Study starts.
- Grab or composite samples taken after final treatment (as the water is discharged into Pond A) indicate that any of the effluent discharge parameters were exceeded.
- At EPA's discretion, EPA rescinds this temporary waiver.

If you have any questions, please give me a call at (214) 655-6735.

Sincerely,

*Chris G. Villarreal*

Chris G. Villarreal  
Remedial Project Manager  
Superfund Enforcement, Texas Section

cc: Trey Collins  
Texas Natural Resource Conservation Commission